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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE GRAND JURY SUBPOENA SERVED :
ON THE AMERICAN CIVIL LIBERTIES :
UNION :
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**DECLARATION OF
JOSHUA DRATEL IN SUPPORT
OF AMERICAN CIVIL
LIBERTIES UNION'S ORDER
TO SHOW CAUSE**

JOSHUA L. DRATEL, pursuant to 28 U.S.C. §1746, hereby declares under penalty of perjury:

1. I am an attorney, and I make this Declaration in support of the American Civil Liberties Union's (hereinafter "ACLU") motion to quash the November 20, 2006, grand jury subpoena served upon it. As set forth more fully in the accompanying Memorandum of Law, there are multiple grounds for quashing the subpoena in whole or in part: it is beyond the power of the grand jury to subpoena "any and all copies" of any document; the subpoena is

unreasonable and oppressive; and the subpoena on its face and as applied violates the First Amendment rights of the American Civil Liberties Union.

2. As set forth in the accompanying Declaration of Terence Dougherty, Esq., in-house counsel to the ACLU, the ACLU was first contacted Friday, November 17, 2006, by the government (in the form of a voice mail message from Assistant United States Attorney Jennifer G. Rodgers) with respect to a document ACLU had received unsolicited via e-mail from a source outside the ACLU on October 23, 2006.

3. Mr. Dougherty first spoke to AUSA Rodgers the following Monday, November 20, 2006, as the Dougherty Declaration recounts.

4. Subsequently, the ACLU retained me later that same day, November 20, 2006, to act as counsel with respect to this issue. Later that afternoon, I telephoned AUSA Rodgers, who advised that the government insisted that the ACLU to surrender that document and any and all copies the ACLU might have. She also stated, in response to my inquiry, that neither the ACLU nor any of its employees were targets of any investigation. She made plain that under her demand neither the ACLU nor its counsel could retain any copy of the document.

5. AUSA Rodgers emphasized that the government insisted on receiving not only any paper copies the ACLU had but also any electronic copies of the document that existed on ACLU's computer system to be destroyed. I explained that ACLU would not surrender the document(s) voluntarily, but would do so only pursuant to legal process. AUSA Rodgers asked if I would accept a subpoena for the ACLU, and I agreed I would.

6. Shortly thereafter, I received by facsimile the subpoena from the government. A

copy of the subpoena is attached hereto as Exhibit 1. The subpoena was initially returnable December 4, 2006, but was adjourned by agreement until December 11, 2006. The instant motion to quash followed.

7. No prior application for this relief has been made.

WHEREFORE, it is respectfully requested that the Court grant ACLU's motion to quash the subpoena in its entirety.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on December 8, 2006.


JOSHUA DRATEL